IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 413 of 2000.

Judgement reserved on: 18.12.2007.

Date of decision: 20.12.2007.

State of H.P. ….. **Appellant.**

Vs.

Bansi Lal …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondent : **Mr. N.K.Thakur, Advocate vice Mr. G.D.Sharma, Advocate.**

Kuldip Singh, Judge.

This appeal has been directed against the judgement, dated 20.3.2000, passed by learned Additional Chief Judicial Magistrate, Theog, in case No. 143-III of 96, acquitting the respondent, under Section 33 of the Indian Forest Act.

2. The prosecution case in brief is that PW 6 Prem Singh, beat Guard on 22.4.1994 was patrolling UF 389 Janahan forest and he found two Deodar trees were illegally cut by someone. On inquiry, it was found that respondent had cut these trees. The respondent was seen felling trees by PW 3 Daulat Singh also. Accordingly,

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Whether the reporters of the local papers may be allowed to see the Judgment?

damage report Ex. PW 2/A was prepared in presence of PW 2 Daulat Ram. The respondent allegedly confessed his guilt. Two scants were recovered, which were handed over to PW 1 Ram Lal on *sapurdari* by memo Ex. PW 1/A. The damage report was verified by PW 4 Kanshi Ram. PW 5 Padam Dev prepared the complaint and filed in the court. The notice of accusation was put to respondent, under Section 33 of the Indian Forest Act, to which he pleaded not guilty and claimed trial. The prosecution has examined six witnesses. The statement of the respondent was recorded, under Section 313 Cr.P.C., he pleaded his innocence but he did not lead any evidence in defence. The learned Addl. Chief Judicial Magistrate, acquitted the respondent, hence this appeal.

3. I have heard the learned Additional Advocate General for the State and Mr. N.K. Thakur, Advocate appearing on behalf of Mr. G.D. Sharma, Advocate, for the respondent. It has been submitted on behalf of the State that learned Additional Chief Judicial Magistrate has not properly appreciated the material on record and the prosecution has proved the case against the respondent beyond reasonable doubt. On the contrary on behalf of the respondent, it has been submitted that the learned Addl. Chief Judicial Magistrate has rightly acquitted the respondent

4. PW 1 Ram Lal has stated that two logs were handed over to him on 22.4.1994, vide Ex. PW 1/A, which is signed by him. PW 2 Daulat Ram has stated that none has confessed his guilt in his presence. He did not support the prosecution and was declared hostile. In cross examination by the prosecution, he has specifically

denied that respondent confessed his guilt on 22.4.1994. He has stated that Guard got his signatures on the document mark-X. PW 3 Col. Daulat Singh has stated that respondent on 17.4.1994 had cut Deodar tree from Panchayat orchard and Guard prepared damage report to this effect. In cross examination, he has stated that logs were cut in two pieces by saw which can be operated by two persons. The Guard did not come in his presence nor damage report was prepared in his presence. The respondent did not confess his guilt in his presence.

5. PW 4 Kanshi Ram has stated that damage report Ex. PW 4/A was verified by him. PW 5 Padam Dev is a formal witness. PW 6 Prem Singh has stated that he remained posted as Guard in Janahan beat from 1989 to 1995. On 22.4.1994, he was patrolling in UF-389 forest, he found two Deodar trees of Class I were cut illegally. On inquiry, it was found that those trees were cut by the respondent. The respondent confessed his guilt in presence of witnesses. One such witness is Daulat Ram. He prepared damage report Ex. PW 4/A and *Iqbalnama* Ex. PW 6/A, which is signed by the respondent. In cross examination, he has stated that trees were cut by saw and he did not inquire as to who were two persons, who cut the trees with saw. The respondent in his statement recorded, under Section 313, Cr.P.C., has pleaded his innocence. The *Iqbalnama* Ex. PW 6/A is allegedly signed by the respondent and Daulat Ram. The respondent in his statement, under S. 313, Cr.P.C. has denied Ex. PW 6/A, PW 2 Daulat Ram has stated that on 22.4.1994 nobody has

confessed his guilt in his presence. Thus *Iqbalnama* Ex.PW 6/A has not been proved.

6. The allegations against the respondent are that he had cut two Deodar trees from UF-389. PW 3 Col. Daulat Singh has stated that respondent had cut Deodar tree from Panchayat orchard on 17.4.1994. In other words, he has stated that one tree was cut by respondent. It has come in evidence that the trees were cut by saw, which can be operated by two persons. The identity of the second person has not been established nor any attempt was made to find out second person involved in felling and cutting the Deodar trees. The prosecution has not examined any independent eye witness to prove that actually the respondent has cut two Deodar trees from UF-389 Forest. The learned Additional Chief Judicial Magistrate has drawn a possible inference from the material on record. No case for interference has been made out.

7. As a result of above discussion, the appeal fails and is accordingly, dismissed.

December 20, 2007. **(Kuldip Singh),**
(*Hem*) **Judge.**